



FEDERAL COURT  
OF AUSTRALIA

12 October 2018

Ms Susan O'Connor  
By email:

Dear Susan,

Offer of Engagement – Ongoing APS Employee

I am pleased to advise that you have been offered ongoing employment in the Federal Court of Australia. The details and conditions of your ongoing employment are outlined in this letter.

1. Position Details

Jurisdiction:	Federal Court of Australia (FCA)
Job Title:	National Judicial Registrar
Location:	Sydney, NSW
Classification:	Senior Executive Service Band 1 (SES 1)
Salary:	\$i per annum, plus superannuation
Position Number:	TBE 1644
Status:	Ongoing, Full-Time
Commencement Date:	<del>As soon as possible</del> 19/11/18

2. Terms and Conditions of Employment

The terms and conditions of the employment are as set out in Agency Determination 2018/6.

Other terms and conditions of your employment are set out in Commonwealth legislation, including the *Public Service Act 1999*.

3. Probation

Your engagement is subject to a condition of probation as per clause 59 of the Federal Court of Australia Enterprise Agreement 2018-2021. During the probation period, you will participate in performance assessments to gauge whether you are meeting the Courts' performance and conduct requirements. If your work performance and/or conduct are considered unsatisfactory during this probation period your employment may be terminated.

4. Outside Employment

You must first seek and obtain written authority from the appropriate delegate to engage in any form of outside employment or to conduct a business, trade or profession. Approval to engage in outside employment will not be granted if it interferes with the effective performance of your official duties, creates or appears to create a conflict of interest, or reflects adversely on the Court.

## 5. Conditions of Engagement

This engagement is subject to:

1. A condition as to security and character clearances:

- You must pass, to the Courts' satisfaction, a Criminal History Check by the Australian Federal Police.
- Where the engagement will result in your dealing with children, you must have at all times a valid working with children or vulnerable people clearance under the laws of the State or Territory where you are performing your duty.

2. A condition as to health clearances

3. A condition as to citizenship (see below)

4. Certified copies of qualifications (if applicable)

Are you an Australian Citizen?

Yes ☒ No ☐

If answered no do you have permanent residency/ a permit to work?

Yes ☐ No ☐

*The Public Service Act 1999 states that a person who is not an Australian Citizen cannot be engaged unless the delegate considers it appropriate to do so. You are required to provide a certified true copy of your current passport and visa. Please do not send original documents, a certified true copy is sufficient.*

Have you taken a redundancy benefit from an APS Agency in the last 12 months?

Yes ☐ No ☒

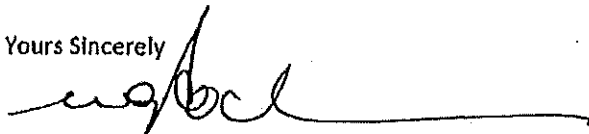
If answered yes, please provide the date that your redundancy period expires:

## 6. Acceptance of the Offer

To indicate your acceptance of this offer of employment and the terms and conditions and obligations outlined, please sign this letter of offer in the space provided and return this letter to [recruitment@fedcourt.gov.au](mailto:recruitment@fedcourt.gov.au)

If you have any questions regarding your employment, please do not hesitate to contact Darrin Moy on

Yours Sincerely



Warwick Soden  
Chief Executive Officer and Principal Registrar  
Federal Court of Australia

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I have read and understood this letter and accept the offer of employment on the terms and conditions set out in the letter. In accepting the offer I agree to abide by the Court's policies and procedures in relation to employment matters which may be made or varied from time to time.

Name:	Sign:	Date:
SUSAN O CONNOR	-	12/10/18

Offer of Engagement - Ongoing  
Revised October 2016



FEDERAL COURT  
OF AUSTRALIA

## AGENCY DETERMINATION 2018/6

I, Warwick Soden, Agency Head, Federal Court of Australia, acting under subsection 24(1) of the *Public Service Act 1999* (the Act), make the following Determination.

Dated: 12/10/18

Signature: 

Agency Head, Federal Court of Australia

### 1. CITATION

1.1 This Determination may be cited as Agency Determination 2018/6.

### 2. COMMENCEMENT

2.1 This Determination will take effect from the employee's assignment of duties to the SES Band 1 classification with the Court commencing on the date of the contract.

### 3. EMPLOYEE OR EMPLOYEES COVERED

3.1 This Determination covers the following employee: Susan O'Connor

### 4. BASIS OF TERMS AND CONDITIONS

4.1 The employee's terms and conditions of employment will be as set out in the *Federal Court of Australia Enterprise Agreement 2018 - 2021* or its replacement, except as outlined in this Determination or covered in the following legislation:

- *Fair Work Act 2009*
- *Public Service Act 1999*
- *Long Service Leave (Commonwealth Employees) Act 1976*
- *Maternity Leave (Commonwealth Employees) Act 1973*
- *Superannuation Act 1976*
- *Superannuation Act 1990*
- *Superannuation Productivity Benefit Act 1988*
- *Safety, Rehabilitation and Compensation Act 1988*
- *Work Health and Safety Act 2011*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*

- *Human Rights and Equal Opportunity Act 1986*
- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004*

## **5. REMUNERATION**

### **5.1 Base Salary and Salary for Superannuation Purposes**

The Employee's base salary is \$                      per annum.

The Chief Executive Officer and Principal Registrar may also adjust remuneration via an allowance to take into account workload, contribution to national initiatives and other factors.

### **5.2 Performance management**

The employee will participate in performance management arrangements applying to Federal Court Senior Executive Employees.

The employer may invoke procedures relating to underperformance at any time, where the performance level of the employee falls demonstrably below the level expected.

### **5.3 Increases to base salary**

Base salary will be increased based on increases paid under the Court's Enterprise Agreement. The Chief Executive Officer and Principal Registrar may also increase base salary at his discretion having regard to other relevant factors.

## **6. OTHER CONDITIONS AND ENTITLEMENTS**

### **6.1 Executive Vehicle**

A private plated vehicle in accordance with the Court's Executive Vehicle Scheme (EVS) guidelines may be elected as an option. Where so elected, the employee is responsible for the actual lease costs of the vehicle, to be deducted from an EVS allowance of \$

The employee may elect to take the cash out value of a vehicle, in lieu of an executive vehicle. The cash out value of the vehicle may be taken in one of two ways:

- An amount of \$22,000 not to count as salary for superannuation purposes.
- An increase to base salary for superannuation purposes, as negotiated with the employer, the cost of which to the Court will not exceed \$                      , having regard to rates of employer contribution to the employee's relevant superannuation scheme (PSS or CSS).

The employee may only elect to take either of the preceding options on the expiry of any existing executive vehicle lease.

Employees may also sacrifice salary to obtain a vehicle under a novated lease arrangement approved by the Court. The Court may issue guidelines for the operation of such an arrangement.

#### **6.2 Employer Superannuation Contributions**

The Court will make employer superannuation contributions in accordance with the rules of the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme including a payment for the Employer Productivity Superannuation Contribution.

The Employee's salary for superannuation purposes shall be the amount of base salary specified sub-clause 5.1, as adjusted from time to time or varied under sub clause 5.3.

If the employee has alternative superannuation arrangements then the Court will contribute at the rate determined by the Chief Executive Officer and Principal Registrar.

#### **6.3 Mobile phone**

The employee will have access to a mobile telephone with message bank facility which may be used for reasonable and incidental non-official calls, but only for calls within Australia. The cost of non-official overseas calls are to be met by the employee.

### **7. TEMPORARY PERFORMANCE OF HIGHER WORK VALUE**

The salary payable to the employee recognises that from time to time there may be a requirement to accept additional responsibilities and/or tasks usually performed by other employees. Where temporary performance in a higher classified position is for a period of two weeks or more, an appropriate higher remuneration allowance will be determined by the Chief Executive Officer and Principal Registrar.

### **8. DOMESTIC TRAVEL**

When travelling on official business in Australia, the employee will use the employers approved air services carrier and is entitled to air travel at business class or equivalent.

The employer will, where requested, take out membership of an airport lounge (eg QANTAS Club) for the employee as part of the employee's remuneration package. The employee will ensure that the employer receives the full benefit of any frequent flyer schemes and that the costs of official travel are minimised to the extent possible through the use of points accrued by the employee during official travel.

The employee will avoid unnecessary travel expenditure in connection with the performance of his or her duties. Travel will be organised so as to minimise cost to the Court.

Costs associated with meals and incidental expenses, incurred in connection with travel by the employee on official business within Australia will be met by the Employer in accordance with SES rates in Australian Public Service Commission (APSC) advice, as updated from time to time. Part-day travel allowance is not payable. Accommodation will be provided in accordance with the Court's travel policy, as varied from time to time.

## **9. RELOCATION EXPENSES**

Where the employee is required to relocate either permanently, on term transfer or on temporary transfer they will be provided with assistance for reasonable costs associated with the transfer as determined by the Chief Executive Officer and Principal Registrar.

## **10. REIMBURSEMENT OF COSTS**

The Chief Executive Officer and Principal Registrar may authorise the reimbursement of employment related out of pocket costs incurred by the employee, including but not limited to, practising certificate and essential professional society membership.

## **11. EMPLOYMENT ISSUES**

### **11.1 Regression of SES Employees**

Should it be necessary to regress an SES employee to a lower-classified position due to under-performance, this will be done in accordance with the any relevant Public Service Commissioner's Directions and legislation applying to the employee.

### **11.2 Voluntary Regression**

Where the Chief Executive Officer and Principal Registrar and the employee agree that a reduction in classification level is necessary, a new employment contract and conditions will be negotiated.

### **11.3 Termination of Employment**

Termination of employment may be for any reason provided in the *Public Service Act 1999*. Where the Court proposes to terminate the employee's employment, termination procedures will be in accordance with the provisions of the *Public Service Act 1999* and the *Fair Work Act 2009* (along with related legislation and Public Service Commissioner Directions). Accumulated recreation leave and unused long service leave credits will be paid out.

### **11.4 Excess SES Employees and Redundancy**

Where the SES position occupied by the employee is determined by the Chief Executive Officer and Principal Registrar to be excess to the needs of the Court, the employee will be subject to the relevant provisions of the *Public Service Act 1999* and any instructions as may from time to time be issued by the Public Service

Commissioner. The Court may also assist the excess employee with reasonable costs in relation to outplacement and financial counselling services.

Where the employee's employment is terminated for reasons of redundancy severance benefits will be determined in accordance with the terms of the *Public Service Act 1999*, Public Service Regulations and Public Service Commissioner Directions.

Subject to the approval of the Public Service Commissioner (in so far as approval by the Public Service Commissioner is required) the employee shall be entitled to payment of an amount equal to two weeks salary for every year of service, plus a pro rata payment for completed months of service since the last completed year of service, up to a maximum of 24 years of service. Where the Public Service Commissioner determines that a lower payment is appropriate in the circumstances, that amount will apply. If the employee is not given a period of notice of termination of employment of at least four weeks, the employee shall be entitled to payment of an amount equal to at least four weeks salary in lieu of notice. If the employee is over 45 years of age and has completed at least two years continuous service this period shall be increased to five weeks in lieu of notice.

#### 11.5 Misconduct Procedures

The procedures for the investigation and resolution of any misconduct issues, including any sanctions, will be as provided for under the *Public Service Act 1999*, the misconduct procedures set out below the Public Service Regulations, relevant Public Service Commissioner Directions and relevant Federal Court policies, where applicable.

Where misconduct may have occurred the following action will be taken:

- a) The Chief Executive Officer and Principal Registrar will consider whether the breach, if proven, could amount to misconduct.
- b) If the Chief Executive Officer and Principal Registrar believes the allegation could amount to misconduct, the Chief Executive Officer and Principal Registrar will advise the employee in writing, within a reasonable time, providing details of the allegation and the sanctions that may be imposed under section 15 of the *Public Service Act 1999*.
- c) The Chief Executive Officer and Principal Registrar will appoint a person to investigate the allegation of misconduct (the Investigator) against terms of reference to be specified by the Chief Executive Officer and Principal Registrar. The terms of reference will specify the person authorised to determine the matter (the Decision Maker). This may be the Investigator, the Chief Executive Officer and Principal Registrar, the Chief Executive Officer and Principal Registrar's delegate or another person. The Decision Maker and the Investigator will be unbiased.
- d) The employee will be advised of the appointment of the Investigator and provided with details of the terms of reference of the investigation. During the investigation, the employee will be given the opportunity to admit or deny the allegation and to make a written and/or oral statement to the Investigator about the allegation.



- e) On the conclusion of the investigation, a decision will be made whether there has been a breach of the Code of Conduct.
- f) The employee will be provided with a copy of the report and, where a breach of the Code of Conduct has been found, details of sanctions or other action which may be taken. The employee will be given seven, or if agreed more, days to provide comments before a final decision is made.
- g) At the expiry of the relevant period, the Decision Maker will consider any additional comments and determine a sanction.

The employee may be suspended by the Chief Executive Officer and Principal Registrar pending investigation and a final decision, in accordance with APS regulations.

## 12. REVIEW OF DETERMINATION

The determination will be reviewed as necessary in light of government policy, arrangements for other SES employees or other relevant considerations.

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